

ARTICLE XVI. TOBACCO

DIVISION I. GENERALLY

Sec. 26-749. Definitions and interpretations.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Compliance checks means the ~~system~~ process or protocols the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, ~~and~~ tobacco-related devices, and nicotine or lobelia delivery devices are following and complying with the requirements of ~~this article~~ law. Compliance checks shall involve the use of minors as authorized by this article. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, ~~or~~ tobacco-related devices, or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to tobacco, tobacco products, ~~and~~ tobacco-related devices, and nicotine or lobelia delivery devices.

Electronic delivery device means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately.

Exclusive tobacco store means a retail store which derives at least 90 percent of its revenue from tobacco and tobacco products and which cannot be entered at any time by persons younger than 21 years of age except as provided herein.

Individually packaged means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this article shall not be considered individually packaged.

Loosies means the common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, or more than \$2.00 per cigar.

Minor means any natural person who has not yet reached the age of 21 years.

Movable place of business refers to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Retail establishment means any place of business where tobacco, tobacco products, ~~or~~ tobacco-related devices, or nicotine or lobelia delivery devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, drugstores, and restaurants.

Sale means any transfer of goods for money, trade, barter, or other consideration.

Self-service merchandising means open displays of tobacco, tobacco products, ~~or~~ tobacco-related devices, ~~or~~ nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, ~~or~~ tobacco-related devices, ~~or~~ nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, ~~or~~ tobacco-related device, ~~or~~ nicotine or lobelia delivery devices between the customer and the licensee or employee. ~~Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.~~ Self-service merchandising shall not include vending machines.

Tobacco means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco.

Tobacco-related products means tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products as defined in this subdivision. "Tobacco-related products" does not include any tobacco product, electronic delivery device, or nicotine or lobelia delivery product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

Tobacco-related devices means any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

Vending machine means any mechanical, electric or electronic, or other type of ~~self-service~~ device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device, unless the machine can be controlled by an electronic device by an employee of the business.

(Code 1978, § 7.93.02; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-750. Purpose.

Because the city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, ~~and~~ tobacco-related devices, ~~and~~ nicotine or lobelia delivery devices, and such sales, possession, and use are violations of both state and federal laws; and because studies, which are accepted and adopted, have shown that most smokers begin smoking before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this article shall be intended to regulate the sale, possession and use of tobacco, tobacco products, ~~and~~ tobacco-related devices, ~~and~~ nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, ~~and~~ tobacco-related devices, ~~and~~ nicotine or lobelia delivery

devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stats. § 144.391.

(Code 1978, § 7.93.01; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-751. Penalties.

(a) *Administrative civil penalties; individuals.*

- (1) Any person under the age of 21 who attempts to purchase a tobacco product is subject to ~~an administrative penalty. The city council may impose administrative~~ penalties as follows:
 - a. ~~First violation: As established by Minn. Stat. § 461.12 Subd. 4 the city council licensing authority may impose a fine as established by ordinance shall consider a variety of alternative civil penalties, including, but not limited to, tobacco-free education; tobacco cessation programs; notice to schools and parents or guardians; community service; and court diversion programs. Alternative civil penalties shall not include fines or monetary penalties, and/or require the person to attend tobacco-related education classes, and/or participate in a diversion program and/or complete certain community services.~~
 - b. ~~Second violation: The city council may impose a fine as established by ordinance and/or require the person to attend tobacco-related education classes, and/or participate in a diversion program and/or complete certain community services.~~
 - c. ~~Third violation: The city council may impose a civil penalty as established by ordinance and/or require the person to attend tobacco-related education classes, and/or participate in a diversion program and/or complete certain community services.~~
- (2) Any person who sells any tobacco product to a person under the age of 21 years is subject to an administrative penalty. The city council shall impose administrative penalties as follows:
 - a. ~~First violation: The city council shall may~~ impose a ~~fine~~ administrative penalty of \$50 as established by ~~ordinance~~ Minn. Stat. § 461.12 Subd. 3.
 - b. ~~Second violation within 12 months: The city council shall impose a fine as established by ordinance.~~
 - c. ~~Third violation within 12 months: The city council shall impose a fine as established by ordinance.~~

(b) *Administrative civil penalties; licensee.* If a licensee or an employee of a licensee is found to have sold tobacco to a person under the age of 21 years, the licensee shall be subject to an administrative penalty as follows:

- (1) First violation: The city council shall impose a ~~fine~~ administrative penalty of \$300 as established by ~~ordinance and/or suspend for a period of ten days~~ Minn. Stat. § 461.12 Subd. 2.
- (2) Second violation within ~~12~~ 36 months: The city council ~~shall~~ must impose a ~~fine~~ administrative penalty of \$600 as established by ~~ordinance and/or suspend for a period of 30 days~~ Minn. Stat. § 461.12 Subd. 2.
- (3) Third violation within ~~12~~ 36 months: The city council ~~shall~~ must impose a ~~fine~~ administrative penalty of \$1,000 as established by ~~ordinance~~ Minn. Stat. § 461.12 Subd. 2 and/or ~~must be~~ suspended for a period of ~~one year~~ not less than seven days and may be revoked.

(c) *Misdemeanors.* Nothing in this article shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this article.

(Code 1978, § 7.93.13; Ord. No. 21-21, § 3, 12-14-2021)

State law reference(s)—Administrative penalties, Minn. Stats. § 461.12, subds. 2, 3.

Sec. 26-752. Violation.

- (a) *Notice.* Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of their right to be heard on the accusation.
- (b) *Hearings.* If a person accused of violating this article so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.
- (c) *Hearing officer.* The city council shall serve as the hearing officer. (Option could be independent hearing officer.)
- (d) *Decision.* If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.
- (e) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the jurisdiction of the city in which the alleged violation occurred.
- (f) *Misdemeanor prosecution.* Nothing in this article shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this article.
- (g) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(Code 1978, § 7.93.12; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-753. Prohibited sales.

It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, ~~or~~ tobacco-related device, ~~or~~ nicotine or lobelia delivery device:

- (1) To any person under the age of 21 years.
- (2) By means of any type of vending machine.
- (3) By means of self-service methods whereby the customer does not need to make verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product, ~~or~~ tobacco-related device, ~~or~~ nicotine or lobelia delivery device, and whereby there is not a physical exchange of the tobacco, tobacco product, ~~or~~ tobacco-related device, ~~or~~ nicotine or lobelia delivery device between the licensee or the licensee's employee, and the customer, unless the sale is by means of a vending machine controlled by an electronic device by an employee of the business. This subsection does not apply to exclusive tobacco stores.
- (4) By means of loosies.
- (5) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

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- (6) By any other means, to any other person, or in any other manner or form prohibited by federal, state or other local law, ordinance provision, and other regulation.

(Code 1978, § 7.93.06; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-754. Vending machines.

It shall be unlawful for any person licensed under this article to allow the sale of tobacco, tobacco products, ~~or~~ tobacco-related devices, ~~or nicotine or lobelia delivery devices~~ by means of a vending machine.

(Code 1978, § 7.93.07)

Sec. 26-755. Self-service sales.

It shall be unlawful for a licensee under this article to allow the sale of tobacco, tobacco products, or tobacco-related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco-related device between the licensee or their employee and the customer unless the sale is by means of a vending machine which is controlled by the licensee or their employee. All tobacco, tobacco products, and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. This section does not apply to exclusive tobacco stores.

(Code 1978, § 7.93.08; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-756. Responsibility.

All licensees under this article shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, ~~or~~ tobacco-related devices, ~~or nicotine or lobelia delivery devices~~ on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this article shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this article, state or federal law, or other applicable law or regulation.

(Code 1978, § 7.93.09; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-757. Compliance checks and inspections.

All licensed premises shall be open to inspection by the city police department or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks ~~in accordance with Minn. Stat. §461.12, subd. 5. by engaging, with the written consent of their parents or guardians, minors over the age of 17 years but less than 21 years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco related devices; Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained or attempted to be obtained as a part of the compliance check.~~ No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or their employee and shall produce any

identification, if any exists, for which ~~he is~~ they are asked. Nothing in this article shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

(Code 1978, § 7.93.10; Ord. No. 21-21, § 3, 12-14-2021)

State law reference(s)—Compliance checks, Minn. Stats. § 461.128, subd. 5.

Sec. 26-758. Other illegal acts.

Unless otherwise provided, the following acts shall be a violation of this article:

- ~~(1) *Illegal sales.* It shall be a violation of this article for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco-related device to any minor.~~
- (2) *Illegal possession.* It shall be a violation of this article for any minor to have in their possession any tobacco, tobacco product, ~~or~~ tobacco-related device, or nicotine or lobelia delivery device. This subdivision shall not apply to minors lawfully involved in a compliance check.
- (3) *Illegal use.* It shall be a violation of this article for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, ~~or~~ tobacco-related device, or nicotine or lobelia delivery device.
- (4) *Illegal procurement.* It shall be a violation of this article for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, ~~or~~ tobacco-related device, or nicotine or lobelia delivery device, and it shall be a violation of this article for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, ~~or~~ tobacco-related device, or nicotine or lobelia delivery device. This article shall not apply to minors lawfully involved in a compliance check.
- (5) *Use of false identification.* It shall be a violation of this article for any minor to attempt to disguise their true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.
- (6) *Entering of exclusive tobacco stores.* It is unlawful for a person under 21 years to enter an exclusive tobacco store for the purpose of purchasing tobacco or tobacco products, or for any other purpose.

(Code 1978, § 7.93.11; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-759. Exceptions and defenses.

Nothing in this article shall prevent the providing of tobacco, tobacco products, or tobacco-related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law.

(Code 1978, § 7.93.14)

Secs. 26-760—26-786. Reserved.

DIVISION 2. LICENSE¹

Sec. 26-787. Required; application; term.

No person shall sell or offer to sell any tobacco, tobacco products, ~~or~~ tobacco-related device, ~~or~~ nicotine or lobelia delivery device without first having obtained a license to do so from the city.

- (1) *Application.* An application for a license to sell tobacco, tobacco products, ~~or~~ tobacco-related devices, ~~or~~ nicotine or lobelia delivery device shall be made on a form provided by the city and filed with the city clerk. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, if the city clerk shall determine that an application is incomplete, ~~he~~ they shall return the application to the applicant with notice of the information necessary to make the application complete.
- (2) *Action.* The city council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the city council shall approve the license, the city clerk shall issue the license to the applicant. If the city council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.
- (3) *Term.* The license shall be effective from January 1 to December 31 of each year, unless otherwise provided in this Code. If the date of application is after January 1, then the effective date shall be the date the application is approved by city council through December 31 of that year.
- (4) *Revocation or suspension.* Any license issued under this article may be revoked or suspended as provided in this article.
- (5) *Transfers.* All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the city council.
- (6) *Location of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this article. Only one license may be issued for any given location or address.
- (7) *Display.*
 - a. All licenses shall be posted and displayed in plain view of the general public on the licensed premises and shown to law enforcement officers upon request.
 - b. Exclusive tobacco stores shall post a notice prohibiting the entering of the store by persons under 21 years of age, which notice shall be in plain view of the general public on the licensed premises. The notice shall be at least 8½ inches by 11 inches in size.

¹State law reference(s)—Municipal tobacco licenses, Minn. Stats. § 461.12.

(8) *Renewals.* The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this article shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(9) *Education requirements.*

- a. The licensee shall be required to educate each new employee who will be selling tobacco or tobacco products with regard to the requirements of this article and state law pertaining to the sale of tobacco products to minors. The licensee shall be required to keep on file evidence of the employee educational session and make available for review said evidence upon reasonable request by the police department.
- b. Prior to the issuance, and/or reinstatement after revocation or suspension of any license, the owner or manager of the licensee shall participate in an educational seminar presented and sponsored by the city, which seminar shall be designed to re-educate the licensee of the city and state tobacco compliance laws and review current employee training practices.

(Code 1978, § 7.93.03; Ord. No. 08-05, § 2, 2-12-2008; Ord. No. 21-21, § 3, 12-14-2021; Ord. No. 23-20, § 2, 11-28-2023)

Sec. 26-788. Fees.

- (a) No license shall be issued under this article until the appropriate license fee is paid in full. The fee for a license under this article shall be as established by ordinance.
- (b) A two-tier license fee structure may be established by city council in the annual rates and fees, whereby incentive is provided to a license holder to utilize age verification technology that meets performance requirements determined by the city.
 - (1) The applicant shall be specifically required by sworn statement to declare whether it will utilize age verification technology.
 - (2) The applicant must submit verification of the establishment and utilization of a training program for employees responsible for the sale of tobacco products.
 - (3) The age verification system must be used for every tobacco sale.

(Code 1978, § 7.93.04; Ord. No. 08-05, § 2, 2-12-2008; Ord. No. 21-21, § 3, 12-14-2021)

Sec. 26-789. Basis for denial of license.

The following shall be grounds for denying the issuance or renewal of a license under this article; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this article:

- (1) The applicant is under the age of 21 years.
- (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, ~~or~~ tobacco-related devices, or nicotine or lobelia delivery devices.

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- (3) The applicant has had a license to sell tobacco, tobacco products, ~~or~~ tobacco-related devices, or nicotine or lobelia delivery devices, revoked within the preceding 12 months of the date of application.
 - (4) The applicant fails to provide any information required on the application or provides false, misrepresented, or misleading information.
 - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.
 - (6) Other unforeseen circumstances or conditions exist such that the issuance or renewal of a license may unreasonably endanger the health, safety, and welfare of the public.

(Code 1978, § 7.93.05; Ord. No. 21-21, § 3, 12-14-2021)

Secs. 26-790—26-810. Reserved.